Supreme Court, U.S.
FILED
FEB 14 2002
CLERK

(4)

No. 01-928

In the Supreme Court of the United States

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ESTATE OF FRANK A. BRANSON, DECEASED,
MARY M. MARCH, EXECUTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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1. Respondent claims that the question presented in this case is whether, in reviewing an estate tax deficiency, the Tax Court may apply the doctrine of equitable recoupment "to take into account the income tax overpayment for the same tax year" (Br. in Opp. i). Even on its own terms, this statement of the question presented makes no sense, for an estate tax is not a periodic tax; it does not arise in, or relate to, any specific "tax year." See Pet. 21 n.6.

Moreover, respondent's attempt to restate the question presented in this case is divorced from the record. This case does *not* involve a set of facts in which the estate tax deficiency and the income tax overpayment "arise in the same tax year" (Br. in Opp. 2 (emphasis deleted)). The notice of estate tax deficiency was issued in 1995 for the estate of a decedent who died in 1991.

Pet. App. 3a, 29a. The income tax payment for which equitable recoupment is claimed was made in 1993 for an income tax that came due in that year in connection with the sale of stock that occurred in 1992. Pet. App. 40a, 75a, 76a. In neither a legal nor factual sense did the estate tax deficiency and the asserted income tax overpayment "arise in the same tax year."

2. Respondent nonetheless asserts that the existence of equitable recoupment jurisdiction should turn on whether the estate tax deficiency determination that *is* the subject of the Tax Court's jurisdiction happens to "arise" in the same year that an income tax payment (over which the Tax Court had no jurisdiction) happens to have been made. In stating the question in that fashion, respondent departs from the reasoning of both of the courts below.[1] Neither the logic, nor the actual holding, of the courts below is limited in the fashion that respondent describes. Instead, respondent's effort to restate the question presented in this case is transparently an attempt to sidestep the direct conflict between the decisions below and the Sixth Circuit's decision in *Estate of Mueller* v. *Commissioner*, 153 F.3d 302 (1998), cert. denied, 525 U.S. 1140 (1999).

a. The coincidence or happenstance that an estate's income tax liability (or payment) arises from a sale of stock that occurred during the same year that the

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[1] Indeed, respondent consciously declined to describe the decisions of the courts below in it's brief. Respondent asserts that it is unnecessary to describe those decisions because their rationale "is self-explanatory." Br. in Opp. 1. By omitting any description of those decisions, however, respondent avoided the necessity of confronting the fact that their reasoning is inconsistent with respondent's assertion that the decisions below are "limited" (Br. in Opp. 2) in their scope.

estate tax accrued (or was paid) has no bearing on the rationale of either the Tax Court or the court of appeals in this case. As we point out in the petition (Pet. 5-6, 16-19), the Tax Court has concluded that it has authority to apply the doctrine of equitable recoupment in any "case over which we have jurisdiction." Pet. App. 122a (Beghe, J., concurring). See Pet. App. 78a-79a. The Tax Court has held that, in reviewing a deficiency issued for *any* type of tax, it may apply the doctrine of equitable recoupment to allow the offset of taxes over which it has *no* jurisdiction and for which a refund would otherwise be barred by the statute of limitations. *Ibid.* The Tax Court reasoned that its formation as an Article I court authorizes it to apply equitable recoupment because it may now "exercise[] judicial, rather than executive, legislative, or administrative, power." Pet. App. 79a. Respondent makes no attempt to defend that reasoning, and the Sixth Circuit correctly rejected it in *Estate of Mueller*, 153 F.3d at 306 (quoting *Commissioner* v. *McCoy*, 484 U.S. 3, 7 (1987)):

> The Tax Court's jurisdiction cannot extend beyond its statutory confines to encompass an equitable remedy such as recoupment because the Tax Court "is a court of limited jurisdiction and lacks general equitable powers" * * * .

The Tax Court nonetheless applied its broad holding both under the facts that existed in *Estate of Mueller* and under the facts of the present case. In thus holding that the jurisdiction that it has over tax deficiencies authorizes it to apply this broad equitable recoupment jurisdiction in all cases, the Tax Court "rebelled against the overwhelming weight of statutory authority and prior case law." *Estate of Mueller* v. *Commissioner*, 153 F.3d at 306.

b. In the present case, the Ninth Circuit expressly agreed with the Tax Court and disagreed with the reasoning and the conclusion of the Sixth Circuit in *Estate of Mueller*. Pet. App. 16a n.5. Without directly addressing the holding of this Court and of the Sixth Circuit that the Tax Court "is a court of limited jurisdiction and lacks general equitable powers" (*Commissioner* v. *McCoy*, 484 U.S. at 7), the Ninth Circuit contrarily reasoned that it would be "anomalous" for the Tax Court to lack the same type of equitable recoupment jurisdiction possessed by the district courts. The Ninth Circuit concluded that this equitable jurisdiction for the Tax Court should be implied in the absence of any express "indication [in the Internal Revenue Code] that equitable recoupment is beyond the jurisdiction of the Tax Court." Pet. App. 11a, 13a.[2]

The Ninth Circuit also stated that the preexisting case law cited by the court of appeals in *Estate of Mueller* (including the decision of this Court in *Commissioner* v. *Gooch Milling & Elevator Co.*, 320 U.S. 418, 419 (1943)) should no longer be applied to preclude the Tax Court from invoking the doctrine of equitable recoupment. Pet. App. 19a. In reaching that conclusion, the court expressly rejected the contrary reasoning of *Estate of Mueller* and disagreed with that court's "reading of the relevant jurisdictional statutes." Pet. App. 16a n.5.

The Ninth Circuit then additionally suggested that the facts of the present case may differ from the facts of *Estate of Mueller*, for the taxpayer in that case had "sought recoupment of an income tax overpayment that was made in a different tax year from the estate tax

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[2] The Sixth Circuit, of course, reached precisely the opposite conclusion in *Estate of Mueller*, 153 F.3d at 306. See page 3, *supra*.

deficiency before the Tax Court." Pet. App. 16a n.5. The court made no attempt, however, to explain how—or even whether—this purported factual distinction would have any legal significance. *Ibid.* Indeed, since the court had already expressly stated that it disagreed with the "reading of the relevant jurisdictional statutes" set forth in *Estate of Mueller*, and had rejected the important principle that "the Tax Court is a court of limited jurisdiction" (*Commissioner* v. *McCoy*, 484 U.S. at 7), it is evident that, if any factual differences existed, they were immaterial to the holding of the Ninth Circuit in this case.

c. Respondent nonetheless urges this asserted factual distinction as the sole basis for it's opposition to certiorari. For the reasons explained in the petition, the purported factual distinction between these two cases has no legal significance because there is no relevance to the concept of a "tax year" where an estate tax deficiency is concerned. Pet. 21 n.6. The estate tax, unlike the income and gift taxes, does not relate to a discrete taxable period. It is a one-time excise on the transmission of property at death. Since the estate tax is not paid for any taxable period, the question whether some other tax happened to be remitted in the same year that the estate tax was remitted has no plausible bearing on the application of the doctrine of equitable recoupment. Indeed, neither the Tax Court nor the Ninth Circuit nor any other court has ever adopted the limited and unsupported rationale that respondent proposes.[3]

3. Respondent also errs in asserting that this Court's decision in *Gooch Milling* has no relevance to

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[3] Moreover, as we have noted, this rationale is not grounded in the actual facts or record of this case. See pages 1-2, *supra*.

this case because Section 272(g) of the 1939 Code (which was in effect at the time of that decision) has been "superceded" (Br. in Opp. 5) by what is now Section 6214(b) of the Internal Revenue Code. Both in its current and prior forms, this statute has authorized the Tax Court (and its predecessor) to consider any "facts" relating to taxable periods *not* before the court in redetermining income or gift tax deficiencies for periods that *are* properly before the court. At the same time, this statute has clearly specified that the Tax Court has no jurisdiction to determine the *amount* of such taxes owed for such other periods. See Pet. 19-21.

This statute has not changed in any material sense since its original enactment as part of the Revenue Acts of 1926 and 1932. See Revenue Act of 1926, ch. 27, § 274(g), 44 Stat. 56; Revenue Act of 1932, ch. 209, § 513(g), 47 Stat. 251 (gift taxes). These early provisions were carried over, without change, in the 1939 Code (ch. 247, 53 Stat. 862) and were then combined into a single provision, as Section 6214(b) of the 1954 Code. 26 U.S.C. 6214(b). Respondent's suggestion (Br. in Opp. 5) that the statute relied on by this Court in *Gooch Milling* has been "superceded" is thus both wrong and misleading.

Moreover, in *Gooch Milling*, this Court did not adopt the rationale that respondent seeks to attribute to that case. The issue presented in *Gooch Milling* was whether the Board of Tax Appeals (the predecessor of the Tax Court) had jurisdiction to determine an income tax overpayment for a year not before that court (1935) which the taxpayer wished to use to offset against an income tax deficiency for a year (1936) that *was* properly before the Board. The Court rejected the taxpayer's argument, noting that, under what was then Section 272(g) (and is now Section 6214(b)), the juris-

diction of the Board to determine an income tax deficiency is limited to the tax due "for the particular tax year as to which the Commissioner determines a deficiency and as to which the taxpayer seeks a review of the deficiency assessment." 320 U.S. at 420. As the Sixth Circuit explained in *Estate of Mueller*, 153 F.3d at 306:

> The reasoning in *Gooch Milling* is just as applicable to the determination of estate tax deficiencies as it is to determination of income tax deficiencies. In both situations, in order to apply equitable recoupment, the Tax Court would have to move beyond the scope of the deficiency at hand and determine an overpayment of a tax assessment not properly before it.

The fact that the statute applied in *Gooch Milling* addresses, and makes clear the limits of, the jurisdiction of the Tax Court in income and gift tax cases "does not support the theory that the Tax Court's jurisdiction is * * * unlimited in estate tax cases." *Estate of Mueller*, 153 F.3d at 305. The Tax Court is an Article I court of limited jurisdiction, and in the absence of a provision that confers jurisdiction over taxes not encompassed within a notice of deficiency, such jurisdiction may not be implied. *Ibid.*[4]

4. The scope of the Tax Court's authority to grant relief in tax cases is unquestionably a matter of recurring and fundamental importance. The Tax Court has broadly concluded that it has authority to apply

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[4] It is telling that respondent has failed even to attempt to articulate a rationale that could support a conclusion that the coincidence of dates of payment of an estate and income tax would have any consequence in determining the limited jurisdiction of the Tax Court as an Article I court.

principles of equitable recoupment in any case before it. And, that court has applied that holding even in the face of an appellate decision that expressly rejected it. See Pet. App. 76a-82a. The decision of the court of appeals adopts the Tax Court's broad conclusion and directly rejects the decision of the Sixth Circuit in *Estate of Mueller*. *Id.* at 16a n.5. Review of the conflict created by the decision in this case is needed to ensure equal treatment among taxpayers and to avoid the undue expenditure of trial and appellate resources that would otherwise result from continued litigation of this recurring issue.

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For the reasons stated above and in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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FEBRUARY 2002